HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

W.P. NO.5982 of 2006

Between:

B. Devaraj … Petitioner

And

The District Collector, Ranga Reddy
District, at Lakadikapool, Hyderabad
and three others … Respondents

:: ORDER ::

Counsel for the petitioner : Sri G. Vidyasagar,
Advocate assisted by

Sri A. Veera Sekara Rao

Counsel for respondent Nos.1 and 3 : Government Pleader for Revenue

Counsel for respondent No.2 : Sri P. Radhakrishna

Counsel for respondent No.4 : Sri T.N.M. Ranga Rao

24th April, 2006

Per G. Bhavani Prasad, J

This is a petition for setting aside order dated 20-2-2006 passed by the Special Court constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short 'the 1982 Act') in I.A.Nos.1045 and 1036 of 2005 respectively in L.G.C.No.230 of 1994.

The factual background of the case is that the fourth respondent filed a petition under the 1982 Act for declaring the petitioner and two others as land grabbers in respect of a plot of land measuring 240 square yards comprised in Survey No.844/23 of Malkajgiri Village and Mandal, Ranga Reddy District. She averred that plot of land was allotted to her by Wesley Girls High School and Junior College Employees Housing Society from out of the assigned land. She further averred that the petitioner and two others had encroached the land and, therefore, they were liable to be declared as land grabbers and they should be directed to hand over vacant possession of the plot by demolishing the existing structures. The Special Court issued notices to the petitioner and two others. A notification under first proviso to Section 8 (6) of the 1982 Act was also got published in Andhra Pradesh Gazette (Extra-ordinary) dated 24-12-1994. The notice issued to the petitioner was returned unserved. Thereafter, the same

was published in Telugu Daily “Udayam’, Hyderabad Mini Edition dated 31-1-1995. The Special Court then ordered ex parte proceedings against the petitioner and two others. After recording the statement of respondent No.4 as P.W.1 and going through the documentary evidence, the Special Court passed order dated 23-2-1995 whereby the petitioner was declared as ‘land grabber’ and was ordered to be evicted.

In the meanwhile, the petitioner, his wife Smt.V. Chandrakala and two others filed Writ Petition No.22807 of 2005 alleging that they were sought to be dispossessed from house bearing Nos.17-119/43 and 17-119/30, Ramanjaneya Nagar, Malkajgiri by Mandal Revenue Officer, Secunderabad. The same was dismissed by the learned Single Judge on 24-10-2005 with an observation that the apprehension expressed by the writ petitioners is not well founded.

After the dismissal of the writ petition filed by the petitioner and three others, he was served with notice dated 5-11-2005 issued by Mandal Revenue Officer, Malkajgiri proposing his eviction pursuant to order dated 23-2-1995 passed by the Special Court in L.G.C.No.230 of 1994. Immediately, the petitioner filed an application under Order 41 Rule 5 read with Section 151 of the Code of Civil Procedure for stay of the judgment and decree dated 23-2-1995. The same was registered as I.A.No.1044 of 2005. He filed another application for setting aside ex parte decree. The same was registered as I.A.No.1045 of 2005. He also filed an application under Section 5 of the Limitation Act for condonation of 3895 days delay in filing the petition to set aside the ex parte decree. That was registered as I.A.No.1036 of 2005. Initially, the Special Court granted ad-interim stay on 23-11-2005, but, after hearing the counsel for the parties, dismissed I.A.Nos.1036 and 1045 of 2005 and vacated ad-interim order.

The petitioner has averred that he is the absolute owner and possessor of house No.17-119/43 in survey No.844/1, admeasuring about 66 square yards at Ramanjaneya Nagar, Malkajigiri, Ranga Reddy District. According to him, the land was allotted to his mother in 1974. He constructed two rooms with asbestos roof in 1984. After his mother’s death in 1990, he constructed pucca house with RCC slab. He and his family is said to be residing in the house. He further claims to have been paying municipal taxes.

The petitioner has challenged orders passed by the Special Court in I.A.Nos.1036 and 1045 of 2005 by asserting that the reasons assigned in the impugned orders are legally untenable. According to him, notice of LGC No.230 of 1994 was never served upon him and, therefore, the order passed by the Special Court for ex parte proceedings is liable to be treated as nullity. The further case of the petitioner is that the so-called publication made in Telugu Daily “Udayam”, Hyderabad Mini Editioin was inconsequential because he has been residing in Ranga Reddy District and that paper does not have substantial circulation in Ranga Reddy.

Sri G. Vidyasagar argued that the Special Court gravely erred by refusing to entertain his client’s petition for setting aside ex parte decree overlooking the fact that notice of LGC No. 230 of 1994 had not been served upon him. Learned counsel submitted that the observation made by the Special Court that the Mandal Revenue Officer must have informed the petitioner about order dated 23-2-1995 is liable to be declared as based on mere surmises and conjectures because no evidence was produced by respondent No.4 to show that notice of the petition filed under the 1982 Act had, in fact, been served.

Learned counsel for respondent No.4 supported the order of the Special Court.

We have carefully perused the record and given our thoughtful consideration to the submissions of the learned counsel for the parties. A perusal of judgment and decree dated 23-2-1995 passed by the Special Court in LGC No.230 of 1994 shows that the petitioner and two others were shown as residents of Door No. 17-119/24, Sri Ramanjaneya Nagar. According to the petitioner, he has been residing at D.No.17-119/43, Ramanjaneya Nagar, Malkajgiri all through. This has not been controverted by respondent No.4 and no material has been placed on the record of this petition to show that the petitioner has, in fact, been residing at D.No. 17-119/24, Sri Ramanjaneya Nagar. If so, notices taken to the incorrect address would have been naturally returned unserved and there is nothing on record to suggest that any order was made by the Special Court or any attempt was made by the fourth respondent to ascertain the correct and complete address of the petitioner for personal service of notice of the land grabbing

case on him. The Gazette notification inviting objections is neither notice of the land grabbing case to the petitioner requiring him to enter appearance nor can it be considered in the natural and ordinary course of human events that the Gazette notification would have attracted the attention of the petitioner directly or through anybody else. While the petitioner is a resident of Malkajigiri of Ranga Reddy District, it is not in dispute that substituted service by publication in newspaper was ordered and made in Hyderabad local edition of Telugu daily 'Udayam', which local edition would not have been in circulation in the local area where the petitioner resides. Even according to the Special Court, the earliest date when the matter could have been brought to the notice of the petitioner was 17-10-2005 when the Mandal Revenue Officer visited the subject property, but there is no material on record to suggest that the Mandal Revenue Officer or his men informed the petitioner about the purpose of their visit or their intention to execute the ex parte decree in the land grabbing case. It was only a surmise and conjecture on the part of the Special Court to assume that the Mandal Revenue Officer might have informed the purpose of his visit to the petitioner. It was only the notice from Mandal Revenue Officer dated 05-11-2005 that was on record indicating any notice or information to the petitioner about the
ex parte decree and its execution. The petitioner filed the relevant applications on 22-11-2005 before the Special Court within time from the date of his knowledge. Therefore, the petition filed by him for setting aside ex parte decree cannot be treated as barred by time. As a corollary, the contrary finding recorded by the Special Court is liable to be set aside.

The petitioner claims to be illiterate and the same being not controverted, his ignorance about the Gazette notification or paper publication cannot be considered unnatural. The Special Court itself noted that sufficient cause with reference to Section 5 of the Limitation Act has to be liberally construed so as to advance substantial justice particularly when no negligence or inaction or want of bona fides can be inferred. If such sufficient cause is shown, the question of any prejudice to the opposite party is of no relevance. The claim of the petitioner that he has no knowledge of the proceedings before the Special Court till the notice on
05-11-2005, is further probablised by the fact that in W.P. No.22807 of 2005 he and the other petitioners therein made no reference to such proceedings. The

fourth respondent might have taken all permissible steps to service notice on the petitioner, but with a wrong address. Though the ex parte decree and the petition are separated by a long gap of about 11 years, the same cannot be an inhibiting factor for granting relief to the petitioner if he is otherwise entitled to the same. No negligence and inaction on the part of the petitioner can be inferred without any material on record as done by the Special Court and it may also be noted that while granting interim stay of the operation of the judgment and decree, in I.A. No.1044 of 2005 on 23-11-2005, the Special Court itself noted that the order in L.G.C. No.230 of 1994 was admittedly an ex parte decree and perusal of the record showed that no notice was served to the petitioner.

For the reasons mentioned above, orders of the Special Court dismissing I.A.Nos.1036 and 1045 of 2005 are liable to be set aside.

In the result, the writ petition is allowed and the impugned orders are quashed. As a sequel to this, I.A.Nos.1036 and 1045 of 2005 in L.G.C.No.230 of 1994 are restored to the file of the Special Court with a direction that the same be disposed of on merits in accordance with law after giving reasonable opportunity to the parties.

However, it is made clear that if the petitioner seeks any adjournment before the Special Court, then that by itself will be sufficient cause for dismissing his application.

G. BHAVANI PRASAD, J

Date: 24-4-2006

G.S. SINGHVI, C.J.

Svv / svs